

1 **KING & SPALDING LLP**
2 MICHAEL J. SHEPARD (SBN 91281)
mshepard@kslaw.com
3 50 California Street, Suite 3300
San Francisco, California 94111
4 Telephone: +1 415 318 1221F
Facsimile: +1 415 318 1300

5
6 KERRIE C. DENT (Admitted *pro hac vice*)
kdent@kslaw.com
7 1700 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20006-4707
8 Telephone: +1 202 626 2394
Facsimile: +1 202 626 3737

9
10 CINDY A. DIAMOND (SBN 124995)
cindy@cadiamond.com
11 58 West Portal Ave #350
San Francisco, CA94127
12 Telephone: 408.981.6307

13 Attorneys for Defendant
14 ROWLAND MARCUS ANDRADE

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 UNITED STATES OF AMERICA,

19 Plaintiff

20 v.

21 ROWLAND MARCUS ANDRADE,

22 Defendant.

23 CASE NO.: 3:20-CR-00249-RS

24 **DECLARATION OF KERRIE C.
DEFENDANT'S REPLY BRIEF**

25
26 Magistrate Judge Beeler
27 Hearing Date: Thursday, July 13, 2023
28 Hearing Time: 10:30 a.m.

DECLARATION OF KERRIE C. DENT

Kerrie C. Dent, counsel for Defendant Marcus Andrade, states as follows:

1. I am one of the lawyers representing Defendant Marcus Andrade in the above-captioned matter. I file this declaration in support of Mr. Andrade's Reply Brief in Support of Motion to Compel Production of Abramoff's Phone.

2. I have personal knowledge of the discovery disputes and related correspondence between the government and defense counsel and, if called as a witness in this matter, could competently testify to the matters stated in this Declaration.

3. Before filing our motion to compel production of Jack Abramoff's phone, I made several efforts to meet and confer with the government to discuss the fact that it had not produced the full Abramoff phone that it had told me (on March 6 and March 8, 2023), and the Court (in a March 22, 2023 supplemental opposition brief), it would produce. The government did not respond to my offers on May 10 and May 31 to discuss its unfulfilled promise to produce the entire Abramoff phone. At no time prior to the filing of this motion did the government ever say it wanted a different protective order and then it would produce Abramoff's phone.

4. AUSA Highsmith first raised the need for an addendum to the protective order on June 13, when he emailed me that, “[t]he AUSA in Washington DC asks that you agree to the rules provided below prior to obtaining a partial unsealing order and releasing the [search warrant] and affidavit to you.” There was no discussion on that date of needing to agree to such rules or an addendum for the production of Abramoff’s phone.

5. At a June 22 meet-and-confer relating to materials not yet produced consistent with the Court's April 7 Order, the government indicated that it would designate not only Butina's search warrant materials as highly sensitive under the addendum, but also the search warrant materials of Erickson. Again, the government made no mention of needing an addendum for production of Abramoff's phone. I later discovered that the Erickson search warrant in his South Dakota case was not under seal, and I obtained a copy from PACER. It can be downloaded on PACER at *In the Matter of the Search Re: 18-044-04*, No. 4:18-mj-00032-VLD, (D.S.D. April 19, 2018), ECF 5.

1 6. On June 26, 2023 – after this motion for the Abramoff phone was filed – the
2 parties had a meet and confer to discuss the materials that still have not been produced as
3 mandated by the Court’s April 7 Order. During that meeting, I told AUSA Highsmith that I
4 would send a redline of the addendum that the government proposed for the Butina search
5 warrant affidavit. There was no mention during that meeting, or at any other time since the
6 government promised to produce the entire Abramoff phone on March 6, of the government
7 wanting Mr. Andrade to sign an addendum for the Abramoff phone.

8 7. In the process of preparing a redline of the government’s proposed addendum to
9 the protective order for the Butina and Erickson search warrant materials, it became apparent to
10 me that the government was seeking changes to the protective order that would apply not only to
11 the search warrants, but also to any other evidence the government designated as “Sensitive” or
12 “Highly Sensitive.” I phoned AUSA Highsmith on June 28 to inquire about the over-broad
13 nature of the proposed addendum. Mr. Highsmith told me that the only other document he
14 planned to designate as “Sensitive” was the Abramoff phone. This was the first time the
15 government suggested that the Abramoff phone was to be designated as sensitive material to be
16 covered by the proposed addendum to the protective order. Until that June 28 phone call, the
17 only objections the government raised to the production of Abramoff’s phone were the ones
18 addressed and answered in Mr. Andrade’s Opening Brief.

19 8. When, during the June 28 phone call, Mr. Highsmith announced his plan to
20 designate the phone as “sensitive” under the proposed addendum (which had purportedly been
21 put forth only because the District of Columbia AUSA was requiring it for the Butina search
22 warrant materials), I told the government that Mr. Andrade would not agree to an additional
23 protective order that the government had never raised during the several months since it failed to
24 follow through with its promise to produce the entire Abramoff phone. I reminded him that we
25 have had an incomplete version of Mr. Abramoff’s phone since May 2022 that includes
26 substantial amounts of personal, private, and sensitive information, but the government had
27 never suggested that any special addendum to the protective order was necessary.
28

1 9. The reason that the government agreed to produce the entire Abramoff phone in
 2 the first place was that the phone produced to Andrade in May 2022 turned out to be an
 3 *incomplete* version of the phone and did *not* include all of the responsive, exculpatory material
 4 on the phone, let alone all the material the search warrant authorized as the government now
 5 suggests.

6 10. In early December 2022, my colleagues and I determined that the version of the
 7 Abramoff phone produced to us did not include all of the relevant communications from
 8 Abramoff's phone that the government had in its possession. The government had produced an
 9 FBI 302 report in which the case agents set forth a "partial summary" of communications on
 10 Abramoff's phone. FBI-302-005158 ("FBI report"). Some of the communications from the
 11 phone that were summarized by the case agents in the FBI report were not included on the
 12 version of Abramoff's phone that was produced to Mr. Andrade.

13 11. On December 9, 2022, I emailed AUSAs Weingarten and Dawson to inform them
 14 that the group chat communications between Abramoff and Levin were missing from the version
 15 of the Abramoff phone the government produced. I further wrote: "Could you please investigate
 16 this on your end? If there were documents removed by Agent Quinn, the RCFL, or anyone else,
 17 then please provide us with a list of what was removed from the Cellebrite, by whom, when, and
 18 for what reason."

19 12. On December 13, 2022, I emailed further with AUSA Dawson, identifying specific
 20 messages that were described by the case agents in the FBI report, but were not included in the
 21 version of the Abramoff phone the government produced to Mr. Andrade. AUSA Dawson agreed
 22 to look into the issue.

23 13. On January 13, 2023, the government produced approximately 114 messages
 24 between Abramoff and Levin's Ukrainian phone number that were referenced in the FBI report
 25 but that had not been included in the version of the Abramoff phone produced to Mr. Andrade.

26 14. During a meet-and-confer call on February 28, 2023, my co-counsel Cindy
 27 Diamond and I asked the government about additional messages missing from the version of the
 28

1 Abramoff phone that the government produced. Several days later, on March 6, AUSA Dawson
2 provided an excellent solution to the missing messages problem when he emailed me that the
3 government was “preparing to produce a complete version of Jack Abramoff’s phone, with only
4 potentially privileged materials filtered out.” He added: “As I mentioned on the phone last week,
5 while our search warrant authority expired long ago, we have obtained consent to access the rest
6 of the phone, and we will produce it to you.”
7

8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct.

10 Executed on July 5, 2023, in McLean, Virginia.
11

12 /s/ Kerrie C. Dent
Kerrie C. Dent
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